

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Fischetti, Vincent, and Loomis, Lawrence

ATTORNEY DOCKET NO.

Serial No. 10/067,995

Filed: 03/25/2002

Group Art Unit: 1651

Examiner: Francisco Chandler Prats

For: A Method of Treating Upper Respiratory Infections

**TERMINAL DISCLAIMER TO OBVIATE DOUBLE PATENTING REJECTION
OF PRIOR PATENT**

Assistant Commissioner for Patents

Washington, D.C. 20231

Sir:

The Owners, New Horizons Diagnostics Corporation and Rockefeller University, each having a 50 percent interest in the instant application, hereby disclaim, except as provided below, the terminal part of the term of any patent granted on the instant application, which would extend beyond the full statutory term defined in 35 USC 154-156 and 173, as presently shortened by any terminal disclaimer, of prior U.S. Patent No. 6,238,661 and the patent arising from each of 09/560,650. The owners hereby agree that any patent so granted on the above-identified application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioners do not disclaim the terminal part of any patent granted on the instant application, that would extend to the expiration date of the full statutory term as defined in 35 USC §§154-156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable or is found invalid in a final judgment by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR §1.321(a), has all claims canceled by a reexamination certificate or as a result of an interference proceeding, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer. Further, Petitioners do not disclaim any extension or restoration of term relating to any patent granted on the above-identified application, which extension or restoration is effected under 35 U.S.C. 155, 155A or 156 or any other applicable statute.

The undersigned, duly authorized to act on behalf of Petitioner, certify that they have reviewed the Assignment(s) described above, and to the best of their knowledge and belief, legal title in the above-identified application rests with Petitioners .

The undersigned declare that all statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent

issuing therefrom.

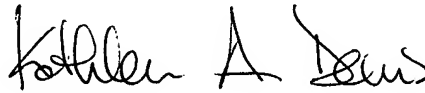
Each of the undersigned is an agent for the named owner.

Respectfully submitted,



10/01/04

Jonathan E. Grant Date
Patent Attorney for New Horizons
Diagnostics Corporation
(301) 603-9071



Kathleen Denis, Ph.D.
Director, Technology Transfer
Associate Vice President
Rockefeller University
(212) 327-8266

Terminal Disclaimer fee is Included